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**FILED**

MAR 07 2011

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By: Jeffrey Koziar  
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SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION,  
UNION COUNTY  
DOCKET NO. C-30-11

PAULA T. DOW, Attorney General of the State of  
New Jersey, and THOMAS R. CALCAGNI,  
Acting Director of the New Jersey Division of  
Consumer Affairs,

Plaintiffs,

v.

PPM TOWING, INC., JANE and JOHN DOES 1-  
10, individually and as owners, officers, directors,  
shareholders, founders, managers, agents,  
servants, employees, representatives and/or  
independent contractors of PPM TOWING, INC.,  
and XYZ CORPORATIONS 1-10,

Defendants.

Civil Action

**COMPLAINT**

Plaintiffs Paula T. Dow, Attorney General of the State of New Jersey ("Attorney General"),  
with offices located at 124 Halsey Street, Fifth Floor, Newark, New Jersey, and Thomas R. Calcagni,  
Acting Director of the New Jersey Division of Consumer Affairs ("Acting Director"), with offices  
located at 124 Halsey Street, Seventh Floor, Newark, New Jersey, by way of this Complaint state:

## PRELIMINARY STATEMENT

1. Having your car towed involuntarily can be a difficult, costly and even traumatic experience. It is particularly jarring for those consumers who park briefly in a shopping plaza only to find their cars gone when they return. The State of New Jersey ("State" or "New Jersey") has enacted careful safeguards to ensure that consumers will only have their motor vehicles involuntarily towed if they have disregarded clear and unambiguous parking prohibitions.

2. By enacting the Predatory Towing Prevention Act, N.J.S.A. 56:13-17 et seq. ("PTPA"), and its accompanying regulations, N.J.A.C. 13:45A-31.1 et seq. ("PTPA Regulations"), the Legislature recognized the need to protect consumers from unscrupulous towing practices. Predatory towing refers to those towing companies who patrol parking lots and tow cars for the most minor of violations, or even no violation at all. Since predatory towers can charge hundreds of dollars in fees for each vehicle removed, such unscrupulous practices have proven very lucrative.

3. Since at least 2010, PPM Towing, Inc. ("PPM Towing" or "Defendant") has engaged in predatory towing practices in violation of the PTPA and PTPA Regulations. Among other transgressions, PPM Towing has: (1) engaged in non-consensual private property towing in locations lacking the proper warning signs; (2) charged unauthorized fees; (3) engaged "spotters" to identify towing targets; (4) refused to release hooked vehicles at the consumers' request and (5) accepted only cash payments. PPM Towing's unscrupulous business practices contravene the express terms and purposes underlying the PTPA, the PTPA Regulations as well as the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 et seq. ("CFA").

### **PARTIES AND JURISDICTION**

3. The Attorney General is charged with the responsibility of enforcing the CFA, N.J.S.A. 56:8-1 et seq., the PTPA, N.J.S.A. 56:13-17 et seq., and the PTPA Regulations, N.J.A.C. 13:45A-31.1 et. seq. The Acting Director is charged with the responsibility of administering the CFA, the PTPA and the PTPA Regulations on behalf of the Attorney General.

4. By this action, Plaintiffs seek injunctive and other relief for violations of the CFA, the PTPA and the PTPA Regulations. Plaintiffs bring this action pursuant to their authority under the CFA, specifically N.J.S.A. 56:8-8, N.J.S.A. 56:8-11, N.J.S.A. 56:8-13 and N.J.S.A. 56:8-19 as well as the PTPA, N.J.S.A. 56:13-21. Venue is proper in Union County, pursuant to R. 4:3-2, because it is a county in which the Defendant has conducted business and in which the cause of action arose.

5. PPM Towing is a corporation established in the State on December 16, 2002. At all relevant times, PPM Towing has maintained a principal business address of 79 Dunnell Road, Maplewood, New Jersey 07105.

6. Upon information and belief, the registered agent in the State for PPM Towing is Eliete Foley, who maintains a mailing address of 61 South Maple Avenue, Springfield, New Jersey 07081.

7. Upon information and belief, John and Jane Does 1 through 10 are fictitious individuals meant to represent owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives and/or independent contractors of PPM Towing who have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

8. Upon information and belief, XYZ Corporations 1 through 10 are fictitious corporations meant to represent any additional corporations that have been involved in the conduct that gives rise to this Complaint, but are heretofore unknown to the Plaintiffs. As these defendants are identified, Plaintiffs shall amend the Complaint to include them.

**GENERAL ALLEGATIONS COMMON TO ALL COUNTS**

9. Upon information and belief, since at least 2003, Defendant has operated a towing company in the State and has engaged in the private property towing business.

9. Upon information and belief, Defendant has conducted private property towing at a parking lot located at 2710 Morris Avenue, Union, New Jersey 07083 ("2710 Morris Avenue").

10. At least as of November 24, 2010, a building adjacent to 2710 Morris Avenue included the following sign:

NO PARKING  
FOR  
LARCHMONT LIQUORS  
OR  
UNION PORK STORE  
ALL VIOLATORS WILL BE TOWED AWAY  
AT CAR OWNERS EXPENSE

11. At least as of November 24, 2010, the following sign was located at the entrance to 2710 Morris Avenue:

NO PARKING FOR:  
  
JOEY'S PIZZA  
MAGIC NAILS  
UNION PORK STORE  
LARCHMONT LIQUORS  
  
ALL CARS WILL BE TOWED AT YOUR  
EXPENSE AT \$125.00

12. To date, the New Jersey Division of Consumer Affairs ("Division") has received thirty-three (33) consumer complaints against PPM Towing concerning tows that occurred from August 27, 2010 to December 23, 2010.

13. Among other things, the consumer complaints allege the following practices as to PPM Towing: (a) surveillance and/or spotting of parking lot, so that vehicles were towed quickly; (b) insistence that fees be paid by cash, rather than credit card; (c) charging of tow back fee; (d) refusal to release vehicle after it has been hooked, but while it is still on the lot; (e) failure to charge tax; and (f) charging for waiting time while the consumer left to obtain cash.

### **COUNT I**

#### **VIOLATION OF THE PTPA AND THE PTPA REGULATIONS BY DEFENDANT (SIGNAGE VIOLATIONS)**

14. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 13 above as if more fully set forth herein.

15. The PTPA sets forth specific requirements for signage concerning unauthorized parking and any resultant towing, as follows:

a. No person shall tow any motor vehicle parked for an unauthorized purpose or during a time at which such parking is not permitted from any privately owned parking lot, from other private property or from any common driveway without the consent of the motor vehicle owner or operator, unless:

(2) there is posted in a conspicuous place at all vehicular entrances to the property which can easily be seen by the public, a sign no smaller than 36 inches high and 36 inches wide stating:

(a) the purpose or purposes for which parking is authorized and the times during which such parking is permitted;

(b) that unauthorized parking is prohibited and unauthorized motor vehicles will be towed at the owner's expense;

(c) the name, address, and telephone number of the towing company that will perform the towing;

(d) the charges for the towing and storage of towed motor vehicles;

(e) the street address of the storage facility where the towed vehicles can be redeemed after payment of the posted charges and the times during which the vehicle may be redeemed; and

(f) such contact information for the Division of Consumer Affairs as may be required by regulation; . . .

[N.J.S.A. 56:13-13.]

16. The PTPA Regulations, N.J.A.C. 13:45A-31.6(a)(2) set forth similar requirements, in addition to the telephone number of "1-800-242-5846, prompt number 4" for the Division.

17. At least since August, 2010, Defendant has violated the PTPA and PTPA Regulations by repeatedly towing vehicles without the vehicle's owner or operator's consent from private property where the signs posted on the property failed to include the parking rules and towing conditions set forth in N.J.S.A. 56:13-13 and N.J.A.C. 13:45A-31.6(a)(2).

18. Each instance where Defendant has towed a vehicle from a parking lot or other private property at which the signage required by the PTPA and/or the PTPA Regulations has not been posted constitutes a separate violation of the PTPA, N.J.S.A. 56:13-13, and/or the PTPA Regulations, N.J.A.C. 13:45A-31.6(a)(2).

19. The PTPA, N.J.S.A. 56:13-21, provides that "[i]t is an unlawful practice and a violation of P.L.1960, c.39 (C.56:8-1 et seq.) to violate any provision of this act [C.56:13-7 et al.]."

20. The PTPA Regulations, N.J.A.C. 13:45A-31.10, similarly provide that “a violation of any of the rules in this subchapter shall be considered an unlawful practice under P.L.1960, c.39 (N.J.S.A. 56:8-1 et seq.).”

21. Each violation of the PTPA and/or the PTPA Regulations constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

## **COUNT II**

### **VIOLATION OF THE PTPA AND THE PTPA REGULATIONS BY DEFENDANT (UNLAWFUL PRACTICES)**

22. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 21 above as if more fully set forth herein.

23. The PTPA identifies unlawful practices by towing companies and provides, in pertinent part:

It shall be an unlawful practice for any private property towing company or for any other towing company that provides non-consensual towing services:

...

e. To fail, when so requested by the owner or operator of a vehicle subject to non-consensual towing, to release a vehicle to the owner or operator that has been, or is about to be, hooked or lifted but has not actually been moved or removed from the property when the vehicle owner or operator returns to the vehicle,

...

f. (1) To charge a fee for a private property or other non-consensual towing or related storage service not listed on the schedule of services for which a fee may be charged as established by the director except as may be permitted by regulation; or

(2) To charge an unreasonable or excessive fee;

g. To refuse to accept for payment in lieu of cash or an insurance company check for towing or storage services a debit card, charge card or credit card if the operator ordinarily accepts such card at his place of business ...

h. To monitor, patrol, or otherwise surveil a private property for the purposes of identifying vehicles parked for unauthorized purposes and towing a motor vehicle parked for an unauthorized purpose from such private property without having been specifically requested to tow such vehicle by the owner of the property.

[N.J.S.A. 56:13-16(e), (f), (g), (h).]

24. Additionally, the PTPA Regulations, specifically N.J.A.C. 13:45A-31.8, set forth private property towing practices which include:

(b) A private property towing company shall not refuse to release to the owner or operator, a motor vehicle that has been hooked or lifted but not removed from private property.

(c) A private property towing company releasing a motor vehicle pursuant to (b) above may charge the owner or operator of the motor vehicle a decoupling fee; it shall not charge the owner or operator any other fees.

25. At least since August, 2010, Defendant has engaged in unlawful business practices in violation of the PTPA and the PTPA Regulations including, but not limited to, the following:

- a. Failing to release a vehicle that had been, or was about to be, hooked or lifted but had not actually been moved or removed from the property after the vehicle owner or operator returned to the vehicle and requested that the vehicle be released;
- b. Charging consumers' unauthorized tow back fees;
- c. Charging consumers' unauthorized waiting time fees;
- d. Repeatedly refusing to accept debit card, charge card or credit card payments; and
- e. Repeatedly patrolling a private property for the purposes of identifying vehicles parked for unauthorized purposes.



26. Each instance where Defendant has engaged in such unlawful practices constitutes a separate violation of the PTPA, N.J.S.A. 56:13-16, and/or the PTPA Regulations, N.J.A.C. 13:45A-31.8.

27. Each violation of the PTPA and/or the PTPA Regulations constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

### **COUNT III**

#### **VIOLATION OF THE CFA BY DEFENDANT (UNCONSCIONABLE COMMERCIAL PRACTICES)**

28. Plaintiffs repeat and reallege the allegations contained in paragraphs 1 through 27 above as if more fully set forth herein.

29. The CFA, N.J.S.A. 56:8-2, prohibits:

The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing[] concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise ...

30. In the operation of its towing business, Defendant has engaged in unconscionable commercial practices including but not limited to the following:

- a. Failing to release hooked vehicles unless consumers pay unauthorized towing fees;
- b. Threatening that a consumer would “never see her car again” unless she paid unauthorized towing fees;
- c. Charging consumers waiting time fees when consumers had to withdraw funds from ATM machines because Defendant improperly refused to accept credit card payments;

- d. Engaging in abusive behavior and using obscene language towards consumers while engaging in unauthorized towing activities; and
- e. Failing to provide refunds to consumers whose motor vehicles were improperly towed.

31. Each unconscionable practice committed by Defendant constitutes a separate violation of the CFA, N.J.S.A. 56:8-2.

### **PRAYER FOR RELIEF**

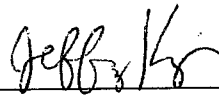
WHEREFORE, based upon the foregoing allegations, the Plaintiffs respectfully request that the Court enter judgment against Defendant:

- (a) Finding that the acts of Defendant constitute multiple instances of unlawful practices in violation of the PTPA, N.J.S.A. 56:13-7 et seq., the PTPA Regulations, N.J.A.C. 13:45A-31.1 et seq., and the CFA, N.J.S.A. 56:8-1 et seq.;
- (b) Permanently enjoining Defendant and its owners, officers, directors, shareholders, founders, managers, agents, servants, employees, representatives, independent contractors, corporations, subsidiaries, affiliates, successors, assigns and all other persons or entities directly under its control, from engaging in, continuing to engage in, or doing any acts or practices in violation of the PTPA, N.J.S.A. 56:13-7 et seq., the PTPA Regulations, N.J.A.C. 13:45A-31.1 et seq., and the CFA, N.J.S.A. 56:8-1 et seq., including, but not limited to, the acts and practices alleged in the Complaint;
- (c) Directing the assessment of restitution amounts against Defendant to restore to any affected person, whether or not named in this Complaint, any money acquired by means of any practice alleged herein to be unlawful and found to be unlawful, as authorized by the PTPA, N.J.S.A. 56:13-21(b), and the CFA, N.J.S.A. 56:8-8;
- (d) Assessing the maximum statutory civil penalties against Defendant for each and every violation of the PTPA, the PTPA Regulations and the CFA, in accordance with N.J.S.A. 56:13-21, N.J.A.C. 13:45A-31.10 and N.J.S.A. 56:8-13;

- (e) Directing the assessment of costs and fees, including attorneys' fees, against Defendant for the use of the State of New Jersey, as authorized by the CFA, N.J.S.A. 56:8-11 and N.J.S.A. 56:8-19; and
- (f) Granting such other relief as the interests of justice may require.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: \_\_\_\_\_



Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: March 7, 2011  
Newark, New Jersey

**RULE 4:5-1 CERTIFICATION**

I certify, to the best of my information and belief, that the matter in controversy in this action involving the aforementioned violations of the PTPA, N.J.S.A. 56:13-17 et seq., and the PTPA Regulations, N.J.A.C. 13:45A-31.1 et. seq., and the CFA, N.J.S.A. 56:8-1 et seq., is not the subject of any other action pending in any other court of this State. I am aware that private contract and other actions have been brought against the Defendant, but have no direct information that any such actions involve consumer fraud allegations. I further certify that the matter in controversy in this action is not the subject of a pending arbitration proceeding in this State, nor is any other action or arbitration proceeding contemplated. I certify that there is no other party who should be joined in this action at this time.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Jeffrey Koziar  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: March 7, 2011  
Newark, New Jersey

**RULE 1:38-7( c ) CERTIFICATION OF COMPLIANCE**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
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Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: March 7, 2011  
Newark, New Jersey

**DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Jeffrey Koziar, Deputy Attorney General, is hereby designated as trial counsel on behalf of Plaintiffs in this action.

PAULA T. DOW  
ATTORNEY GENERAL OF NEW JERSEY  
Attorney for Plaintiffs

By: Jeffrey Koziar  
Jeffrey Koziar  
Deputy Attorney General  
Consumer Fraud Prosecution Section

Dated: March 7, 2011  
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